



European
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Charter

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**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

2 May 2013

Case document No. 2

Association for the Protection of all children (APPROACH) Ltd v. Cyprus
Complaint No. 97/2013

**OBSERVATIONS FROM THE GOVERNMENT
ON THE ADMISSIBILITY**

Registered at the Secretariat on 2 May 2013

SUBMISSION OF THE GOVERNMENT OF THE REPUBLIC OF CYPRUS CONCERNING COMPLAINT NO.97/2013 (COLLECTIVE COMPLAINT AGAINST CYPRUS SUBMITTED BY THE ASSOCIATION FOR THE PROTECTION OF ALL CHILDREN (APPROACH) LTD)

RELEVANT DOMESTIC LAW:

- The Children Law (Cap. 352, 83(I)/1999, 143(I)/2002)
- The Violence in the Family (Prevention and Protection of Victims) Laws of 2000 and 2004 (119(I)/2000 & 212(I)/2004)
- The Penal Code (various articles on offences against the person)Cap. 154
- Regulations which regulate the operation of public secondary schools of 1990 to 2011

CONVENTIONS

- Convention on the Rights of the Child

General comments

A children's rights perspective is incorporated in all relevant laws of Cyprus. Treaties and Conventions that have been ratified by the Republic of Cyprus, have superior force to any domestic law. The Convention on the Rights of the Child has been ratified and implemented by the Republic of Cyprus, since 1991. The Convention on the Rights of the Child explicitly prohibits any form of violence against children, including corporal punishment.

The Children Law (Cap. 352, 83(I)/1999, 143(I)/2002)

The Convention of the Rights of the Child has, from the day of the entering into force of the ratifying Cyprus Law, superior force over the domestic law and in particular over the Children Law Cap.352.This is expressly provided by article 169 of the Cyprus Constitution. So article 54(6) is considered unconstitutional, has absolutely no effect at all, it is void and obsolete. The Convention provisions supersede and remove any article which is not in conformity with it.

The Children Law, Cap. 352 will be repealed and replaced by two new Bills (The Welfare, Care and Protection of Children, The Registration of Child Day-Care and Residential Care, both ready for legal vetting) and four draft Regulations on minimum standards concerning Day-Care Programmes for Preschool Children, Day-Care Programmes for School-age Children, Child Home-Carers, Child Residential Care.

In order to safeguard the welfare, care and protection of children, according to the provisions of the Convention, the chapter on the Protection of Children within the new draft Law for the Welfare, Care and Protection of Children is ready for legal vetting. The other chapters of the draft Law along with the relevant regulations concerning standards of operation of Child and Adolescent Homes are expected to be ready for legal vetting within 2013. The new draft Bills conform fully with the principles and provisions of both the UN Convention on the Rights of the Child and the European

Convention on the Exercise of Children's Rights. The welfare and best interests of the child are of paramount consideration in the draft Law.

The new draft Bills, which at present are in the process of consultations with the affected Services/Departments and NGOs, include provisions and explicitly prohibit any form of violence against children, including corporal punishment.

The Violence in the Family (Prevention and Protection of Victims) Laws of 2000 and 2004

The Violence in the Family (Prevention and Protection of Victims) Laws of 2000 and 2004 explicitly prohibit corporal punishment against children (0-18 years) by a parent or any other family member or any person with parental authority over children.

The Penal Code Cap.154

The Penal Code has many provisions which penalize actions against the person. So in the hypothetical case when a teacher hits a student he will be charged with assault or causing bodily harm or similar offences contained in the Penal Code Cap.154.

Regulations which regulate the operation of public secondary schools

With regards to corporal punishment the Ministry of Education and Culture has issued in September 2009 a circular addressed to all head-teachers of public schools indicating that any form of corporal punishment in schools is strictly prohibited. Head-teachers were asked to discuss the circular during a staff meeting and consider it as a high priority. A relevant clause is also included in the Regulations based on the Law 99/1989 which regulate the operation of public secondary schools. Similarly with regards to school violence and school bullying another circular was sent to schools in April 2012 outlining the main international research results and asking teachers to intensify their efforts in early detecting such problems and immediately inform the competent authorities of the Ministry.

The Revised European Social Charter

(a) Article 7 – The right of children and young persons to protection

Article 7 para. 10 reads:

With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake:

to ensure special protection against physical and moral dangers to which children and young persons are exposed, and particularly against those resulting directly or indirectly from their work.

(b) Article 17 – The right of children and young persons to social, legal and economic protection

Article 17 reads:

With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed:

1.
 - a. to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose;
 - b. to protect children and young persons against negligence, violence or exploitation;
 - c. to provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family's support;
2. to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.

Position of the Government of the Republic of Cyprus

(a) Concerning article 17

The Government has not accepted article 17 of the Revised European Social Charter, therefore it is not bound by the said article.

It is hereby stated that jurisprudence indicates that collective complaints on corporal punishment were examined under article 17 and not under article 7 para. 10.

(b) Concerning article 7 para. 10

The Government considers that there is no violation of article 7§10 concerning violent punishment of children on the following grounds:

-The Convention on the Rights of the Child, which has been ratified and implemented by the Republic of Cyprus since 1991, explicitly prohibits any form of violence against children, including corporal punishment. According to the Cyprus Constitution Treaties and Conventions that have been ratified by the Republic of Cyprus, have superior force to any domestic law. Therefore, in practice, article 54(6) of the Children Law is considered UNCONSTITUTIONAL, and therefore inactive, of no effect, obsolete and void and instead the provisions of the Convention of the Rights of the Child supersede and remove that article.

-Moreover, the Children Law will be repealed and replaced by two new Bills within 2013 and the new draft Law for the Welfare, Care and Protection of Children which is ready for legal vetting, includes provisions and explicitly prohibits any form of violence against children, including corporal punishment

-The Violence in the Family (Prevention and Protection of Victims) Laws of 2000 and 2004 explicitly prohibit corporal punishment against children (0-18 years) by a parent or any other family member or any person with parental authority over children.

-A clause prohibiting any form of physical violence as pedagogical measure is included in the Regulations which regulate the operation of public secondary schools. Additionally the Ministry of Education and Culture has issued a circular addressed to all head-teachers of public schools indicating that any form of corporal punishment in schools is strictly prohibited.

-The Government will proceed within the next few weeks with the amendment of the Children Law and deletion of clause 6 of article 54. Actually all the preparatory work has been done and the only thing that remains is the approval of the House of Representatives.

Therefore the Government kindly requests the Committee to dismiss the collective complaint submitted by APPROACH as unfounded.